

Service Date: December 19, 1989

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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|-------------------------------------|---|--------------------|
| IN THE MATTER of the Application    | ) | UTILITY DIVISION   |
| of US West Communications for       | ) |                    |
| Forbearance of Regulation RE:       | ) | DOCKET NO. 89.6.19 |
| Community Medical Center, Missoula, | ) |                    |
| Montana.                            | ) | ORDER NO. 5416     |

ORDER ON RECONSIDERATION

FINDINGS OF FACT

On June 21, 1989 US West Communications (USWC) filed an application with the Montana Public Service Commission (MPSC or Commission) requesting forbearance of regulation for the provision of a two year intraLATA long distance volume discount contract service for Community Medical Center (Missoula, Montana) and all its accounts. This application was filed pursuant to § 69-3-808, MCA.

On June 23, 1989, at a duly noticed work session, the Commission granted the forbearance application based upon the alternative offer of Touch America to Community Medical Center.

On June 30, 1989 Touch America (TA) filed a Motion for Reconsideration of the MPSC's action granting forbearance. USWC filed a Reply Brief on July 13, 1989.

On July 16, 1989, at a duly noticed work session, the MPSC denied TA's Motion for Reconsideration and affirmed its previous approval of the forbearance application. The Commission bases this decision upon the statutory standard for Commission review of forbearance applications: "The commission shall deny the application only upon a finding that the application is incomplete or that the subject or similar service is not being offered to the customer by parties other than the applicant." § 69-3-808(3), MCA (emphasis added). USWC's application is complete under the statute and Commission rules. And, it has been shown that similar service is being offered to Community Medical Center by TA. Therefore, under the statutory standard of the Montana Telecommunications Act, the Commission is compelled to grant the application. TA's Brief presents arguments that granting forbearance in this case raises the danger of predatory pricing, an unlawful price squeeze, or rate deaveraging by USWC. The Commission shares these concerns, however, legislative action would be necessary for the Commission to consider such factors before acting on a forbearance application.

The Commission found in this docket considerable difficulty in obtaining information necessary to arrive at a prompt, well reasoned decision within the framework provided in § 69-3-808, MCA. Because of these difficulties, and since both the form and substance of a forbearance application are equally important, the Commission will consider the initiation of a rulemaking proceeding to add certain filing requirements in the forbearance rules (ARM 38.5.2715 et seq.) to facilitate its consideration of the existence of an alternative offer and expedite its rulings on forbearance applications.

Although the forbearance statute (§ 69-3-808, MCA) may not permit analysis of the economic merits of USWC's discounted sales prices in considering the forbearance application itself, the MPSC intends to analyze the merits of such discount prices in later dockets. USWC is hereby put on notice that to the extent any such sales prices fall below the Commission's estimate of relevant marginal costs, the resulting shortfall shall be borne by USWC shareholders.

#### CONCLUSIONS OF LAW

1. USWC provides regulated telecommunications services within the state of Montana and is a public utility under the regulatory jurisdiction of the Montana Public Service Commission, §§ 69-3-101 and 69-3-803(3), MCA.

2. The Commission has authority to supervise, regulate and control public utilities. § 69-3-102, MCA.

3. USWC's application contained the information required by § 69-3-808, MCA and ARM 38.5.2715.

4. Similar telecommunications service is being offered to the customer by a party other than the Applicant. § 69-3-808 (3), MCA.

ORDER

1. USWC is granted forbearance of rate regulation with respect to the provision of a two year intraLATA long distance volume discount contract service for Community Medical Center.

2. TA's Motion for Reconsideration is DENIED.

3. On October 20, 1989 TA filed a request for review of USWC's forbearance contract with Community Medical Center under Paragraph 6 of the Protective Order. This Order concludes phase one of this docket, regarding the granting of forbearance. Phase two will consider TA's request.

Done and Dated this 19th day of December, 1989 by a 5-0 vote.

DOCKET NO. 89.6.19, ORDER NO. 5416

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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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CLYDE JARVIS, Chairman

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JOHN B. DRISCOLL, Commissioner

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HOWARD L. ELLIS, Vice Chairman

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WALLACE W. "WALLY" MERCER, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Ann Peck  
Commission Secretary

(SEAL)

NOTE:        You may be entitled to judicial review in this matter.  
              Judicial review may be obtained by filing a petition for  
              review within thirty (30) days of the service of this  
              order.    Section 2-4-702, MCA.